



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/162756

PRELIMINARY RECITALS

Pursuant to a petition filed October 31, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner is “not disabled” for MA – Disability purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. The petitioner is 44 years old. He has not been adjudicated by any governmental agency to be blind or disabled under the Social Security regulations. His highest education level is the 11th grade.
3. The petitioner has congestive heart failure. On August 31, 2013 through September 1, 2013 the petitioner was hospitalized for alcohol withdrawal with possible alcohol related convulsions,

gastritis secondary to alcoholism, alcohol induced thrombocytopenia, and macrocytic anemia, likely secondary to alcohol abuse. From December 16, 2013 through December 23, 2013 the petitioner was hospitalized for acute congestive heart failure and alcohol dependence and withdrawal. The petitioner's ECHO report from that time shows a severely reduced ejection fraction with global hypokinesia. He had a left ventricular ejection fraction (LVEF) of approximately 20% with moderate mitral regurgitation, and mild tricuspid regurgitation. A more recent ECHO report from September 2014 shows that the petitioner's LVEF improved to 40 – 45 %. Petitioner was previously wearing a LifeVest. As of September 2014 his condition had improved to a point where he no longer needed to wear the LifeVest because he was no longer at a risk for sudden cardiac death.

4. On December 23, 2013 the petitioner applied for MA – Disability. The petitioner stated that he suffered from congestive heart failure and that he was unable to work. He alleged that he was disabled effective December 16, 2013. The petitioner's last employment was as Auto Mechanic for Homes Auto from 2005 to 2007. His daily activities include cleaning, shopping, and fixing things. He stated that his hobbies included sports, running, and working on cars.
5. On October 3, 2014, the Disability Determination Bureau's (DDB's) medical consultant, [REDACTED], reviewed the petitioner's medical records, and found that the petitioner could perform sedentary work with no climbing of ramps, stairs, ladders, ropes, and scaffolds. [REDACTED] noted that the petitioner had congestive heart failure and alcohol dependency issues with additional medical issues related to his alcohol dependency. [REDACTED] believed that the petitioner was largely credible when he said that his congestive heart failure causes him to constantly get light headed. He is able to some household chores, but has issues bending, lifting, pushing, and pulling with his current medications. [REDACTED] believed that the petitioner's statements were credible given his health conditions, and thus limited him to sedentary work with the above-listed limitations. Under the grid rules, given the petitioner's age, this makes him not disabled.
6. On October 7, 2014 the DDB mailed the petitioner a decision stating that they found that he did not qualify for MA – Disability.
7. The petitioner requested reconsideration, and the DDB reaffirmed the denial of disability. On December 12, 2014 another DDB medical consultant, [REDACTED], reviewed the petitioner's medical records. [REDACTED] noted that the petitioner's excessive alcohol intake was a contributing factor to his congestive heart failure. Fortunately the petitioner has demonstrated significant recovery. His estimated ejection fraction improved to 40%. At his most recent cardiac exam in November 2014 the petitioner denied having any cardiac symptoms. [REDACTED] limited the petitioner to a light work. This is an improvement from the previous limitation to sedentary work. Under the grid rules, given the petitioner's age, he was not disabled.
8. The petitioner has not, to-date, applied for Social Security disability benefits.
9. The petitioner is not engaged in substantial gainful activity. The petitioner has not worked since 2007 when he was an auto mechanic. In 2013 the petitioner was hospitalized for pneumonia. He was diagnosed with congestive heart failure at that time. His excessive alcohol intake was a contributing factor to his congestive heart failure. Since 2013 the petitioner has limited his drinking and his condition has improved.
10. Petitioner has a severe impairment of congestive heart failure.
11. The petitioner's congestive heart failure does not meet or equal any applicable listing.
12. The petitioner has the residual functional capacity to perform sedentary work with no climbing of ramps, stairs, ladders, ropes, and scaffolds.

13. The petitioner cannot perform past relevant work. The petitioner's past relevant work is classified as medium. The petitioner's past relevant work was as an automobile mechanic or garage mechanic as defined in DOT 620.261-010.
14. The petitioner is able to perform sedentary jobs in the national economy. Therefore, the petitioner is capable of substantial gainful activity, and is not disabled.
15. The petitioner's testimony that he is able to care for a 2, 3, 6, and 8 year old is credible. He states that the children sometimes get him different items that he wants, which helps him because he then does not need to get home. The petitioner also stated that he is able to ensure the safety of these children in his care. The petitioner is also able to perform the necessary activities of daily living including simple cooking, walking to the park, supervising the children at the park, run errands with another person driving him as he does not have a driver's license.

DISCUSSION

In order to be eligible for MA as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months. 20 C.F.R. § 404.1505. Therefore, this administrative law judge is required to review the petitioner's current MA appeal utilizing the same tests for disability as those used by the Social Security Administration in determining disability for Supplemental Security Income (Title XVI benefits).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, while the observations, diagnoses, and test results reported by a physician are relevant evidence, the opinions of the doctors as to whether an individual is disabled are not conclusive as to that determination.

In addition, the definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it is severe, that it affects an individual's basic work activities, and that it will last 12 months or longer as a severe impairment. Therefore, while an individual's testimony as to his or her impairments is important, it is not determinative. Allegations of physical or mental limitations must be supported by medical evidence in the record.

THE FIVE-STEP DISABILITY DETERMINATION PROCESS

The above requirements are delineated in five sequential tests established in the Social Security Administration regulations. These are general steps to evaluating a disability application, whether it includes only physical, only mental, or a combination of physical and mental impairments. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will be found to be not disabled regardless of medical findings. However, if an individual is not working, or is working but the earnings do not rise to the substantial gainful level, proceed to Step 2. 20 C.F.R. § 416.920(b).

2. An individual who does not have a “severe impairment” which significantly limits his or her ability to work will be found not disabled. However, if an individual is found to have a severe impairment, proceed to Step 3. 20 C.F.R. § 416.920(c).
3. If the individual’s severe impairment meets or equals a listing in 20 C.F.R. § 404, subpart P, Appendix 1, that individual will be determined disabled. However, if the individual’s severe impairment does not meet or equal a listing, proceed to Step 4. 20 C.F.R. § 416.920(d).
4. If the individual is capable (has the Residual Functional Capacity) to perform past work, the individual will be determined not disabled. However, if the individual does not have the capacity to perform past work, proceed to Step 5. 20 C.F.R. § 416.920(e).

(Note, if the individual has marginal education (less than 7th grade) and work experience of 35 or more years of unskilled arduous physical labor and can no longer perform past work at a customary exertional level, he or she will be determined disabled under 20 C.F.R. § 416.962) 20 C.F.R. § 416.920(f)(2).

5. If the individual is capable of performing any substantial gainful activity in the national economy, that individual will be determined not disabled. However, if the individual cannot perform any substantial gainful activity in the national economy, that individual will be determined disabled. 20 C.F.R. § 416.920(f)(1).

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

In addition, where an individual has an impairment or combination of impairments resulting in *both* (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. As explained by the Code of Federal Regulations:

When we assess your *physical* abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis . . . When we assess your *mental* abilities, we first assess the nature and extend of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

PROCESSING OF PETITIONER'S DISABILITY APPLICATION

For Step 1, Petitioner is not working and meets this step.

For Step 2, in determining whether a disability is “severe” under 20 C.F.R. § 416.920(c), the DDB applies the following test:

If you do not have any impairment or combination of impairments, which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience.

In this particular case, the DDB determined Petitioner had a severe impairment, congestive heart failure, and that he met Step 2, meaning the analysis continued to Step 3. I agree with the DDB on this point. Although the petitioner has decreased his alcohol intake, and his congestive heart failure is improving, this condition

has lasted longer than 12 months. This condition or impairment has more than minimal limitations in his ability to perform basic work activities.

Under Step 3, Petitioner's conditions do not meet or equal any listed impairment. The listing for congestive heart failure is 4.02. To meet this listing the petitioner must show that Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure). The petitioner's ECHO from September 2014 does not meet this portion of the listing. I note that when the petitioner had an ejection fraction of 20% he was hospitalized for an episode of heart failure. During a period of stability, he is unable to meet this portion of the listing. In order to meet this listing, the petitioner would also have to show that this congestive or chronic heart failure resulted in additional limitations. The petitioner is able to complete his activities of daily living. In fact, he is even able to care for children. There has not been three or more separate incidents of acute congestive heart failure in a twelve month period, and the petitioner has not shown that he was unable to perform an exercise tolerance test.

I find that the petitioner has the residual function capacity to perform sedentary work with no climbing of ramps, stairs, ladders, ropes, and scaffolds. This finding is consistent with [REDACTED]'s opinion of the petitioner's medical records in October 2014. I note that [REDACTED] reviewed the petitioner's medical records on reconsideration in December 2014. [REDACTED] noted that the petitioner's medical condition had improved. He was no longer wearing his LifeVest, and the medical records showed that he was complaining of less symptoms of congestive heart failure than in his previous visits. This is consistent with the petitioner's testimony that he was able to watch four children ages 2, 3, 6, and 8. The petitioner described this as the children watching him because the children would go and get him items as he needed the items, however, the petitioner stated that he was able to maintain the children's safety and be responsible for them while watching them. Although this could support light work, the petitioner also testified that he has to sit down, and that the children will retrieve items for him. Although he is able to take the children to the park, he has to sit down once he gets to the park. Given this testimony and the petitioner's medical records, I find that he has the ability to perform sedentary work with no climbing of ramps, stairs, ladders, ropes, and scaffolds. Although his condition has improved, I do not believe that it has improved to the point where he is able to perform light work.

PAST RELEVANT WORK (PRW)

The petitioner cannot perform his past relevant work. The petitioner's past relevant work is classified as medium. The petitioner's past relevant work was as an automobile mechanic or garage mechanic as defined in DOT 620.261-010. Given that the petitioner is limited to sedentary work, he is no longer able to perform this work.

STEP 5 – SUBSTANTIAL GAINFUL ACTIVITY / GRID RULES

Once Petitioner proves that she cannot return to her former work, the agency must show that there are jobs in the national economy that the Petitioner can perform. “‘In the ordinary case,’ the agency meets their burden at the fifth step [of the disability determination analysis] ‘by resorting to the applicable medical vocational guidelines (the grids), 20 C.F.R. § 404, Subpt. P, App. 2 (1986).’” *Rosa v. Callahan*, 168 F.3d 72, 78 (2d Cir. 1999) (quoting *Bapp*, 802 F. 2d at 604). The grids “take into account the Petitioner's residual functional capacity in conjunction with the Petitioner's age, education, and work experience.” *Id.*

In this case the petitioner is 44 years old with an 11th grade education and a history of skilled or semi-skilled work. Under grid rule 201.25, he is not disabled.

CONCLUSIONS OF LAW

The Department correctly determined that the petitioner is “not disabled” for MA – Disability purposes.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

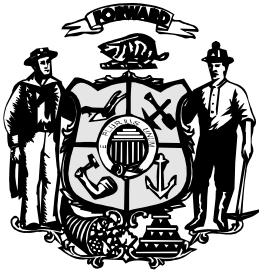
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of March, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on March 3, 2015.

Milwaukee Enrollment Services
Disability Determination Bureau